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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/591,117

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Jacques Thomasset

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23117

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02/05/2010

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EXAMINER

KASHNIKOW, ERIK

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

02/05/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/591,117	<b>Applicant(s)</b> THOMASSET ET AL.	
	<b>Examiner</b> ERIK KASHNIKOW	<b>Art Unit</b> 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 24 November 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>11/24/09</u> .  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 2 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kawaguchi et al (5,403,029).

3. In regards to claims 1, 2 and 5 Kawaguchi et al. teach a method for forming a composite by extrusion molding a resin material wherein the composite resin material comprises an outer synthetic layer and an inner synthetic layer enclosed therein, wherein the inner synthetic layer is the functional layer, such as a gas barrier layer (column 1 lines 7-9, 5 lines 63-64 and column 3 lines 28-31). Kawaguchi et al. teach that these are to be further used for compression molding (column 10 lines 60-67). Kawaguchi et al. teach an embodiment wherein there is an axis of revolution around said body (figures 8a-8d). Absent a showing of criticality with respect to "functional layer concentration" and " $(R_{min}-R_0)/(R_{max}-R_0)$  ratio" (result effective variables), it would have been obvious to a person of ordinary skill in the art at the time of the invention to adjust the "concentration and ratio" through routine experimentation to values, including those presently claimed in order to achieve "an effective amount and

positioning of barrier material". It has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

4. Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kawaguchi et al. (US 5,403,529) in view of Kudert et al. (US 6,332, 767).

5. As stated above Kawaguchi and Akiyama et al. teach a molten "dose" prior to undergoing any compression molding wherein an internal layer is enveloped within the outer layer however they are silent regarding adhesive layers and the internal layer.

6. Kudert et al. teach articles wherein a functional layer is contained within an outer layer.

7. In regards to claim 3 and 4 Kudert et al. teach an embodiment wherein the functional layer is between two adhesive resins which would increase the functional layers affinity to said outer layer (column 27 lines 38 to column 28 line 19).

8. In regards to claim 6 Kudert et al. teach an embodiment wherein it is known to include folds in resin with in resin articles (Figures 6 and 7).

9. One of ordinary skill in the art at the time of the invention would have been motivated to modify the invention of Kawaguchi and Akiyama with that of Kudert because the invention of Kudert offers increased adhesion of the functional layer (column 28 lines 1-19).

10. Claims 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kawaguchi et al. in view of Langecker (US 4,883,630).

11. As stated above Kawaguchi et al. teach an article made of one resin with 2 layers of a functional resin embedded within and varied distances between the inner layer and the axis of symmetry. However they are silent phase opposition shifts of the two layers.

12. Kawaguchi et al. teach that the layers are formed by the extrusion of the layers as well as a cutting step to form the dose (columns 8-10 as cited above).

13. Langecker teaches a method for the making of a mold article comprised of a thermoplastic resin (column 1 lines 5-20) including embodiments wherein one layer surrounds the next layer (column 3 lines 62-64).

14. In regards to claim 6 and 7 Langecker teaches that rate of flow of the plastics into the mold can be varied. Langecker teaches that the optimum material distribution is taking place while the changing of the flow rates is going on (column 3 lines 42-64), one of ordinary skill in the art would recognize that to keep the optimum material distribution when the flow of one material is decreased the other has to be increased to make up the difference. Langecker also teaches phase opposition in claim 1 where it is taught that the resins are only injected one at a time, therefore when one is at full flow, the other is at no flow, and in a phase opposition.

15. In regards to claim 8 Langecker teaches a method which involves the injecting of at least one functional layer and at least one structural layer at different times in order to encapsulate one of the resins. Langecker also teaches the varying of the volume of the mold in proportion to the resin injected (claim 1).

16. While Kawaguchi et al. and Langecker are silent regarding pairing the cutting step with the variation in flow, it would have been obvious to one of ordinary skill in the art at the time of the invention to do this so that one obtains doses consistent in composition and interior design which would then lead to consistent articles made from said doses.

17. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the process of Kawaguchi et al. with the process of Langecker because the process of Kawaguchi et al. would benefit from the confidence provided by the process of Langecker that an exact material distribution in the mold cavity is ensured (column 2 lines 59-64).

### ***Response to Arguments***

18. Applicant's arguments, with respect to the objection of the abstract have been considered, the objection of the abstract is withdrawn.

19. Applicant's arguments with regards to the Dohata rejection are moot in view of new grounds of rejection.

20. Examiner notes that while Langecker and Kudert do not disclose all the features of the present claimed invention, Langecker and Kudert are used as teaching reference, and therefore, it is not necessary for this secondary reference to contain all the features of the presently claimed invention, *In re Nievelt*, 482 F.2d 965, 179 USPQ 224, 226 (CCPA 1973), *In re Keller* 624 F.2d 413, 208 USPQ 871, 881 (CCPA 1981). Rather this

reference teaches a certain concept, and in combination with the primary reference, discloses the presently claimed invention. If the secondary reference contained all the features of the present claimed invention, it would be identical to the present claimed invention, and there would be no need for secondary references.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ERIK KASHNIKOW whose telephone number is (571)270-3475. The examiner can normally be reached on Monday-Friday 7:30-5:00PM EST (Second Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on (571) 272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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